

January 31, 2003

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 - 12th Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

Re: *IB Docket No. 02-111*

Dear Ms. Dortch:

We are writing on behalf of Pacific Telecom Inc. ("PTI") in reference to the letter addressed to you from the Office of the Governor ("Governor") of the Commonwealth of the Northern Mariana Islands ("CNMI") dated January 8, 2003 ("Governor's January 8 Letter").

The Governor states that he has been informed that the U.S. Department of Labor ("DOL") "is preparing" to file a civil contempt action against subsidiaries of PTI's thirty percent shareholder, Tan Holdings Corporation, for alleged breach of a 1992 Consent Judgment "unless a settlement can be reached."<sup>1</sup> The Governor claims that PTI's failure to disclose this information violates PTI's obligations under Section 1.17 of the Commission's rules.

Contrary to the Governor's claim, PTI's statements regarding the Consent Judgment were accurate as submitted, in full conformance with Section 1.17. The Governor makes reference to a subsequent development at the DOL and suggests that PTI had an obligation under Section 1.17 to update the FCC. In fact, the language of Section 1.17 does not establish a requirement for updates; and, even if such a requirement were implied, it presumably would be limited to the standard established in the rule, that is, the prohibition against "material omissions."<sup>2</sup> The

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<sup>1</sup> Governor's Letter January 8 Letter at 2.

<sup>2</sup> In contrast to Section 1.17, Section 1.65 of the FCC's rules does require applicants to submit updated information about matters other than those addressed on FCC application forms, but only when "there has been a substantial change" as to matters of "decisional significance," a circumstance that does not apply here for the reasons described in the text.

Marlene H. Dortch

January 31, 2003

Page 2

matters referred to by the Governor, however, cannot be considered material considering the Commission clearly has stated that it will not take cognizance of alleged non-FCC misconduct “unless it is adjudicated.”<sup>3</sup> In this case, no adjudication of any alleged breach of the 1992 Consent Judgment has taken place. As reflected in the attached January 15, 2003, letter from Willie Tan, President of Tan Holdings Corporation, to the CNMI Governor, the DOL has not even *initiated* a suit alleging such a breach. Moreover, pursuant to standard DOL administrative procedures preceding the potential initiation of a lawsuit, a representative of the relevant apparel manufacturers has requested a meeting with DOL to discuss resolution of the issues; and the request remains pending.

The Governor once again challenges PTI’s explanation for not initially disclosing the *nolo contendere* plea entered by L&T International Corporation.<sup>4</sup> Since the Governor adds nothing new, PTI simply cross-references its prior submissions.<sup>5</sup>

The Governor also criticizes PTI for not disclosing that a company owned by PTI minority investor Michael Leung was involved in the settlement of garment industry class action lawsuits.<sup>6</sup> Mr. Leung’s interest in Onwel Manufacturing, Inc., however, is not material to this proceeding. No FCC rule or policy requires an applicant to disclose its involvement in the settlement of a civil lawsuit.<sup>7</sup> Moreover, Mr. Leung’s twenty-percent investment in PTI (through Missouri Holdings, Inc.) is purely passive, and the focus of the Commission’s inquiry was on the involvement of subsidiaries of Tan Holdings Corporation, the more active minority ultimate investor in PTI.

The Governor’s argument that THC Communications Corp. “at least potentially” will control PTI must be rejected as a strained interpretation of a shareholders’ agreement that includes only typical protections for the interests of significant minority shareholders.<sup>8</sup> It is

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<sup>3</sup> *Policy Regarding Character Qualifications In Broadcast Licensing*, 102 F.C.C. 2d 1179, 1205 (1986). The Commission has found that the character qualifications standards adopted in the broadcast context can provide guidance in the common carrier area. *See, e.g., GTE Corporation and Bell Atlantic Corporation*, 15 FCC Rcd 14032, 14227-28 n. 970 (2000).

<sup>4</sup> Governor’s January 8 Letter at 2-3.

<sup>5</sup> *See* letters from Kenneth D. Patrich and Timothy J. Cooney to Marlene H. Dortch, July 17, 2002, re: Section 1.65 Submission, IB Docket No. 02-111 and attached declaration of George Chiu, and October 8, 2002, re: IB Docket No. 02-111 at 2.

<sup>6</sup> Governor’s January 8 Letter at 3.

<sup>7</sup> The Governor also adds nothing new by reiterating his claim, *id.* at 3 n.5, regarding PTI’s delay in identifying Mr. Leung as a holder of a British National (Overseas) (“BNO”) passport.

<sup>8</sup> Governor’s January 8 Letter at 4.

Marlene H. Dortch

January 31, 2003

Page 3

noteworthy that when the Governor is not attacking PTI for being foreign-controlled, he attacks PTI for “potentially” being controlled by U.S. citizens.

The Governor’s argument regarding alleged monopsony power in the CNMI labor market also should be dismissed. First, the Governor has provided no justification for raising this argument (based on data from 1999-2000) for the first time six months after the deadline for filing petitions to deny. Second, local CNMI regulators and/or the Justice Department are the appropriate bodies to review local labor market conditions that allegedly affect the entire CNMI labor pool, not the FCC. Third, as Mr. Tan’s attached letter states at 5, PTI’s acquisition of The Micronesian Telecommunications Corporation (“MTC”) is subject to an agreement that will preserve the jobs and the terms under which the Company’s staff is currently employed; and in any event managerial control of PTI will be held by Prospector Investment Holdings, Inc., not by a Tan subsidiary with alleged monopsony power. Finally, PTI’s goal of accelerating the development of advanced telecommunication services in the CNMI can only be achieved by attracting, maintaining, developing and motivating a highly trained and skilled workforce. PTI anticipates that its efforts to expand and improve the telecommunications offerings of MTC will increase private employment opportunities in the CNMI for the benefit of all CNMI residents, a goal that PTI would hope the Governor shares.

Respectfully submitted,

/s/

Kenneth D. Patrich

Timothy J. Cooney

cc: Jennifer Hindin, counsel for Bell Atlantic New Zealand Holdings, Inc.  
Attached service list



Tan Holdings Corporation

**WILLIE TAN**  
President

January 15, 2003

Honorable Juan N. Babauta  
Governor  
Commonwealth of the Northern Mariana Islands  
Capitol Hill, Saipan, MP 96950

Dear Hon. Governor:

RE: Reply of the Office of the Governor of the Commonwealth of the Northern Mariana Islands to Submissions of Pacific Telecom, Inc. (PTI) to the Federal Telecommunications Commission (FTC).

I was greatly discouraged as I read the January 8 letter of attorney Thomas Crowe, speaking on behalf of your office opposing the sale of Verizon's local assets - Micronesian Telecommunications Corporation (MTC) - to Pacific Telecom, Inc. This letter went to great lengths to attack my character, and therefore, I must speak openly to help set the record straight.

As I read the letter, I reflected back on the beginning of Tan Holdings 20 years ago and why we are here today. In 1982, the Commonwealth government was actively promoting a free and open market with high hopes of becoming a self-sufficient economy. We were approached by government leaders who were seeking investors at that time.

We started from the bottom just like everyone else in small business. We were enticed by the promise of a new and business-friendly Commonwealth, and as a result, we moved our company headquarters from Guam to Saipan in 1983.

This was prior to the start of the tourism industry and our company was among the first to invest significantly in ventures that the island wanted and lacked. We were fortunate that new business opportunities were plentiful and with hard work over many years, Tan Holdings grew to become a successful and diverse group of companies. We became a leading contributor to the CNMI's economy and reinvested in Saipan time and time again.

Governor Babauta / 2  
January 15, 2003

But like many others just starting out in America's newest Commonwealth, we became more knowledgeable along the way about laws that applied here. It has been 12 years since a now-famous U.S. Labor case has been settled. We made a business decision to pay the settlement. That was painful, but it is over and many good things have followed.

We learned how to become a better business and made a commitment to making continuous improvements. We hired experts to help us develop a system of corporate values and employee care practices that work in a multi-cultural environment. We invested in training programs and began orienting all our employees about our philosophy that "Right things do right."

The practice of taking good care of our employees, putting in place internal controls and monitoring, and building a better workplace opened doors for opportunity. It enabled us to attract local people to join our management team and brought some of the best customers to our doors.

Today we do business with the top world-class brands like Liz Claiborne, Polo Ralph Lauren, and so many others. We have earned the respect of top banking institutions like HSBC, Citibank and Bank of Hawaii. We deal with leading vendors and are the number one customer in the world of Continental Airlines because of our cargo business. We have even received recognition from foreign governments.

So with all due respect, it is disappointing that our own government does not recognize the contributions we have made to these islands. The businesses we've built are a success story. We hope the CNMI government will come to appreciate the many international benchmarks and awards this local company has earned.

We have put in place our own Health & Safety Department to make sure our workplace is the best on Saipan. The U.S. Department of Labor's OSHA Division now calls us a model and frequently cites our facilities as an example of what is possible with training and an employer's commitment to safety and health.

Our businesses in the CNMI have high standards. Seven of our companies are ISO certified for quality management practices. Our three apparel factories have been deemed socially compliant by the Societe Generale de Surveillance (SGS), based on the SA 8000 principles or Social Accountability 8000, a model set of standards drawn from International Labor Organization conventions.

Governor Babauta / 3  
January 15, 2003

Under my directive, our factories led the development of the Saipan Garment Manufacturers' Code of Conduct and were also the founding members of the "OSHA Excellence 2000 Partnership." Participating in this program means that we voluntarily submit our workplace to frequent independent monitoring to ensure compliance with the most stringent American standards.

We have also developed our own commitment to world-class standards for worker care, which we call the "Unified Principles of Social Responsibility and Practice" or UPSRP. This consolidation of all the best principles found in codes of conduct and responsible business practices around the world helped us to win a prestigious 2001 Award of Excellence by the Hong Kong Management Association.

Last November, Tan Holdings received top honors from the Philippine's First International Employers Awards, organized by the Department of Labor and Employment of the Republic of the Philippines, and the Philippines Overseas Employment Agency. Our company was awarded with two recognitions, the "Presidential Award of Distinction" and the "International Employers Award".

The Presidential Award of Distinction, given at Malacanang Palace in Manila, was a special award conferred personally by Her Excellency Philippine President Gloria Macapagal-Arroyo. This was presented to only 10 international companies that exhibited distinct achievement in performing extraordinary acts of assistance and aid to their employees during times of emergency, stress, hazard or danger, as well as exhibited the finest employee care programs. Tan Holdings shared this honor with other corporations such as Hyatt International Hotels & Resorts, the Saudi Arabian Oil Company (Saudi Aramco), Emirates/Dubai National Air Travel Agency, Chicago Bridge & Iron Company, and JGC Corporation.

Our commitment to being the best does not stop with winning awards. For all of our companies, it also means being good corporate citizens. We have given more than a million dollars to local charities. Last year we formed the Tan Holdings Foundation, a non-profit organization to help manage our charitable activities on Saipan and throughout the region.

For the past two years, we have been the largest local contributor to the Northern Marianas Red Cross chapter. We also gave to many community organizations and public schools. We provided volunteer work of numerous executives. We encouraged our employees to participate in the Red Cross, the Northern Marianas College Foundation, the Marianas Visitors Authority, the Saipan

Governor Babauta / 4  
January 15, 2003

Chamber of Commerce and so many other community organizations. Our employees from all levels raised money for the American Cancer Society, organized beach cleanups, and donated money from their own pockets for typhoon relief. This is something we encouraged because we feel it's the right thing to do.

So with all of these positive achievements, I was surprised to see the accusations by Mr. Crowe that we are a company that has something to hide. He alleged new and recent labor problems. As I have personally told U.S. Labor officials, if we ever have a problem of unpaid overtime, we will promptly pay our employees. The fact is that we have so many controls in place, we do not believe that such a problem exists.

For many years, our payroll has been monitored twice each month by auditors from Deloitte Touche Tohmatsu, one of the world's top accounting firms. They submit their independent reports directly to the U.S. Department of Labor. If any problems are found, they are immediately corrected. We did not disclose anything about a U.S. Labor investigation in PTI's applications because the fact is *no charges have been filed against our company.*

Attorney Crowe referred to our company Asia Pacific Airlines (APA) and its license to provide charter cargo services. He said a failure to disclose information delayed the issuance of our license from the U.S. Department of Transportation. However, what Mr. Crowe failed to mention is that this was the first charter service of its kind in Micronesia to ever get full certification. We are very proud that APA is the only all-cargo airline that has taken the business risk to serve the small communities in these islands and provide a vital service. Today it helps the regional economy by bringing in the U.S. and foreign mail, taking fresh fish from Micronesia to market in Japan, and shipping other perishable and time-sensitive products in and out.

Attorney Crowe cited the class action lawsuit against Saipan's apparel industry and American retailers that buy clothing made on this island as a reason to recommend against the sale of MTC. He used this as another opportunity to question the character of certain investors in PTI. Unfortunately, top companies in the world today are a frequent target for lawsuits, whether or not they have any merit.

After four years of demanding litigation, we welcomed the favorable settlement of this lawsuit. The settlement will contribute to rebuilding Saipan as the best location in the world to do business. While we disagreed with the motives behind

Governor Babauta / 5  
January 15, 2003

the lawsuit, we supported the settlement for the betterment of the apparel industry.

Nevertheless, Mr. Crowe used this lawsuit as a means to attack me and Mr. Michael Leung. Mr. Leung, an investor in PTI, is a man of great integrity and is a very successful business person. As you may know, Mr. Leung has experience here as an owner of one of Saipan's oldest apparel factories. He is also a major investor in a profitable cellular company in Hong Kong. I hope to have the opportunity to introduce you to this gentleman so you may understand what a person of his caliber and technical expertise can bring to the Commonwealth. He is exactly the type of investor the CNMI should encourage at this time.

Mr. Crowe also uses the size of our THC work force as a reason to deny PTI's application, saying that further growth may result in our having an influence over local wage rates. More than anything else, global competition, a high cost of doing business, and a small marketplace dictate what Saipan employers can afford to pay their workers. While I do not wish to debate the wage issue here, it brings to mind a much deeper question regarding free enterprise in the Commonwealth: Is it the policy of this Administration to limit the growth of local businesses? Is this concern directed only at our company?

Under PTI's contract to buy MTC, there is an agreement in place, which will preserve the jobs and terms under which the phone company's staff are employed. The skilled work force of the company is one of its strongest assets and we have no intention of changing this.

During several meetings you and I have had, we discussed the Verizon issue only once. You told me your only concern was the abrupt manner in which you feel Verizon's corporate officials communicated with your office. You did not express concern about our company's involvement or the character of our management. However, it is clear from the persistent attacks of your lawyer that substantial sums of scarce CNMI resources have been spent to advance these objections to our purchase of MTC.

On the other hand, your staff claimed that foreign ownership was the major concern. They said the sale would have been approved if Tan Holdings provided 100% of the ownership. With such conflicting information, it is very hard to know how to properly address the government's concerns.

I may have told you that Tan Holdings alone could have purchased MTC, but instead we chose to share this opportunity with other investors with leading expertise in telecommunications -- something I thought the CNMI and MTC would benefit from.



Governor Babauta / 6  
January 15, 2003

Governor, for 20 years we have called Saipan our home. We care about the future of these islands, and we believe in the American system of free enterprise upon which the Commonwealth was built. We have world-class facilities here in Saipan, which I would like to invite you to come and see for yourself.

Today we are a major private contributor to our government's budget and we hope to do even better in years to come. We have a long-term commitment to the CNMI and all the businesses we do here.

I know that in these extremely tough times, the CNMI needs help in the form of new investment from the outside to stimulate the local economy. It seems most counterproductive to delay the sale of MTC, which would immediately bring the CNMI millions in gross revenue taxes, not to mention the millions in investment for an improved phone system for the community's future.

When you and I met recently, you sought my ideas on how to help improve the ailing local economy. Let us work together on this.

In all sincerity, I do believe our re-investment in this community, in MTC, and the endorsements we've made to new investors are the fastest and best ways we can help the Commonwealth.

Please give us this opportunity by supporting the sale.

Sincerely,



Willie Tan

cc: Distribution attached

## **CERTIFICATE OF SERVICE**

I, Felicia Lane, a legal secretary at Wilkinson Barker Knauer, LLP certify that on January 31st 2003, the "Letter Response Regarding the CNMI Governor" was served on all parties listed below by hand delivery (indicated by asterisk) and U.S. mail, first class, postage prepaid , or by hand delivery where indicated by an asterisk (\*), upon the parties listed below.

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/s/

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